

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

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ROGER W. MEHLE,

Plaintiff-Appellant,

- v. -

AMERICAN MANAGEMENT SYSTEMS, INC.,

Defendant-Appellee.
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Case No. 01-7191

**MOTION OF VINCENT R. SOMBROTTO, ET AL.,
FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF**

Vincent R. Sombrotto, President of the National Association of Letter Carriers;
Robert L. Tunstall, Secretary-Treasurer of the American Postal Workers Union; Colleen M.
Kelley, President of the National Treasury Employees Union; Richard N. Brown, President of the
National Federation of Federal Employees; Clifford D. Dailing, Secretary-Treasurer of the
National Rural Letter Carriers Association; Walter M. Olihovik, National President of the
National Association of Postmasters of the United States; Joseph W. Cinadr, President of the
National League of Postmasters of the United States; Ted Keating, Executive Vice President of
the National Association of Postal Supervisors; Michael B. Styles, President of the Federal
Managers Association; Charles Fallis, National Treasurer of the National Association of Retired
Federal Employees; Freda Kurtz, Past President of Federally Employed Women, Inc.; Sandra
Sue Adams-Choate, Assistant General Counsel – Legislation, for the American Federation of
Government Employees; Richard L. Strombotne of the Senior Executives Association and Gary

A. Edwards of the National Association of Government Employees (together, “Movants”) hereby move, pursuant to Federal Rule of Appellate Procedure 29 and Rule 29(b) of the Rules of this Court, for leave to file an *amicus curiae* brief in the above case.

The Movants serve as representatives of various unions and associations of federal and postal employees, associations of federal and postal managers and supervisors, and associations of federal retirees. The members of these organizations constitute the vast majority of the approximately 2.5 million civilian participants in the Thrift Savings Plan (“the Plan”), a 401(k)-like savings plan for federal employees and retirees. *See* 5 U.S.C. §§8431-8440f. The plan savings of these employees and retirees constitute the assets of the Thrift Savings Fund (“the Fund”). *See id.* §§8432, 8437.

The Federal Retirement Thrift Savings Board (“the Board”) establishes policies for the investment and management of the Fund. *See* 5 U.S.C. §8472(f)(1)(A). The Board’s Executive Director, who acts as fiduciary of the Fund, carries out these policies, acting solely in the interest of Plan participants. *See id.* §8474(b)(1).¹

In this case, the Board’s Executive Director, Plaintiff-Appellant Roger Mehle (“Mehle”), sued a contractor, Defendant-Appellee American Management Systems, Inc. (“AMS”), for fraudulently procuring and then breaching a contract with the Board to build a computerized record-keeping system. AMS’s unlawful conduct caused the Fund to suffer an estimated \$50 million in actual damages. The United States District Court for the District of

¹The Employee Thrift Advisory Council is an advisory committee that advises the Board and its Executive Director concerning the Fund. *See* 5 U.S.C. §8473. Movants make up the majority of the Council.

Columbia, in a flawed decision, dismissed for want of subject matter jurisdiction, holding that only the United States Attorney General, not the Board's Executive Director, has authority to bring suit.

On appeal, Mehle seeks to establish that as fiduciary of a fund of private individuals' savings, he necessarily has authority to sue on the Fund's behalf.

Movants have a keen interest in this case as representatives of organizations whose members constitute the vast majority of the Plan's civilian participants. The assets of the Fund are the participants' money, held in trust for them. *See* 5 U.S.C. §8437(g). Thus, Movants have an interest in the Fund's recouping its damages from AMS. Just as important, they have an interest in the legal principle at stake – that as Fund fiduciary, the Board's Executive Director must necessarily have authority to bring suit on behalf of the Fund to protect it and the savings of its millions of participants.

In their *amicus* brief, Movants intend to explain to the Court why, from their perspective, a Fund fiduciary must necessarily have authority, free from political control or influence, to sue on behalf of the Fund and its participants. In particular, Movants will argue that the integrity of a system in which millions of federal workers and retirees place their savings requires that the Fund be represented by a fiduciary who acts solely in the interests of the Plan's participants. The *amicus* brief will argue that in establishing the Plan, Congress did not intend that the ability to sue on its behalf would be left to the sole discretion of a political appointee subject to interests other than those of the Plan participants.

For these reasons, Movants request leave to file an *amicus curiae* brief.

Dated: February 8, 2002

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I served true copies of the Motion Of Vincent R. Sombrotto
Et Al. For Leave To File *Amicus Curiae* Brief, along with the Rule 26.1 Disclosure Statement,
this 7th day of February, 2002, by U.S. Express Mail, postage prepaid, upon:

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